

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

MULTIFOLD INTERNATIONAL)  
INCORPORATED PTE. LTD.,)  
)  
Plaintiff, ) C.A. Nos. 23-1173-JLH  
 ) 23-1323-JLH  
v. )  
 )  
MOTOROLA MOBILITY, LLC, )  
 )  
Defendant. )

Friday, June 14, 2024  
1:00 p.m.  
Teleconference

844 King Street  
Wilmington, Delaware

BEFORE: THE HONORABLE JENNIFER L. HALL  
United States District Court Judge

APPEARANCES:

McCARTER & ENGLISH, LLP  
BY: ALEXANDRA M. JOYCE, ESQ.

-and-

SCHULTE, ROTH & ZABEL, LLP  
BY: SAUNAK K. DESAI, ESQ.

Counsel for the Plaintiff

1 APPEARANCES CONTINUED:

2 RICHARDS, LAYTON & FINGER, P.A.  
3 BY: SARA M. METZLER, ESQ.

4 -and-

5 ORRICK, HERRINGTON & SUTCLIFFE, LLP  
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7 Counsel for Motorola

8 MORRIS, NICHOLS, ARSHT & TUNNELL, LLP  
9 BY: BRIAN P. EGAN, ESQ.

10 -and-

11 WILLIAMS & CONNOLY  
12 BY: ANDREW TRASK, ESQ.  
13 BY: ADAM D. HARBER, ESQ.  
14 BY: EDWARD J. BENNETT, ESQ.

15 Counsel for Google

16

17 THE COURT: Hi. Good afternoon, everyone.

18 We're here on the line in two related cases for discovery;  
19 Multifold versus Motorola and Multifold v. Google. That's  
20 civil action numbers 23-1173 and 23-1323.

21 Do we have somebody on the phone for plaintiffs?

22 MS. JOYCE: Good afternoon, Your Honor. This is  
23 Alex Joyce from McCarter & English on behalf of plaintiffs  
24 and I'm joined by Saunak Desai from Schulte, Roth & Zabel.

25 MR. DESAI: Good afternoon.

13:01:53 1 THE COURT: Good afternoon. And do we have  
13:01:55 2 somebody for Google?

13:01:56 3 MR. EGAN: Good afternoon, Your Honor. This is  
13:01:58 4 Brian Egan from Morris Nichols on behalf of Google. Joining  
13:02:02 5 me today are Andrew Trask, Adam Harber and Ed Bennett from  
13:02:06 6 Williams & Connolly.

13:02:10 7 THE COURT: Okay. And how about Motorola?

13:02:14 8 MS. METZLER: Good afternoon, Your Honor. This  
13:02:17 9 is Sara Metzler from Richards, Layton & Finger on behalf of  
13:02:19 10 Motorola. Joining me today is Gerald Porter from Orrick  
13:02:25 11 can.

13:02:25 12 MR. PORTER: Good afternoon, Your Honor.

13:02:27 13 THE COURT: Good afternoon.

13:02:28 14 Okay. So we've looked at these letters. I  
13:02:32 15 guess we'll hear from defendants first. And I guess the  
13:02:37 16 main question I had is wouldn't this be better to just, once  
13:02:44 17 you get the name OF who they want to use, to just have you  
13:02:49 18 take a look and let us know if you think that person is a  
13:02:53 19 concern and so we'll have something a little bit more  
13:02:57 20 specific to go by whether or not youR proposal to have them  
13:03:02 21 be on the hook for any violations is something that's  
13:03:05 22 reasonable?

13:03:09 23 MR. TRASK: Good afternoon, Your Honor. This is  
13:03:10 24 Andrew Trask from Williams & Connolly for Google and I'll be  
13:03:15 25 presenting for defendants today.

13:03:16 1 So I understand Your Honor's question, which is  
13:03:21 2 whether the kind of predisclosure provision under 7.5 of the  
13:03:25 3 protective order is sufficient as to these individuals. And  
13:03:29 4 our position is that it's not. Certainly it is important to  
13:03:34 5 have disclosure of these temporary foreign nationals before  
13:03:40 6 they're permitted to view what is defendants' most sensitive  
13:03:43 7 business information, but reviewing a CV is insufficient to  
13:03:46 8 understand whether or not there may be a protective order  
13:03:50 9 violation down the line by one of these individuals. And as  
13:03:53 10 we've explained in the letter brief, there is no recourse  
13:03:57 11 for defendants should there be a protective order violation  
13:04:01 12 once these individuals leave the country and are no longer  
13:04:05 13 subject to the Court's jurisdiction.

13:04:07 14 So the pre-approval process that's built into  
13:04:11 15 the protective order proposal is a step in the right  
13:04:17 16 direction for defendants, but it doesn't resolve the  
13:04:20 17 ultimate issue, which is that these are contractual source  
13:04:23 18 code reviewers who are by definition in the United States on  
13:04:26 19 a temporary basis and by definition will be leaving the  
13:04:30 20 United States and leaving the Court's jurisdiction at some  
13:04:33 21 future point in time. And the pre-approval process simply  
13:04:40 22 doesn't inform defendants with sufficient definiteness of  
13:04:43 23 whether or not there will be a protective order violation.  
13:04:46 24 And of course, if there is, these are the only individuals  
13:04:51 25 under the entire protective order who are contemplated to be

13:04:56 1 leaving the country and leaving the Court's jurisdiction.  
13:04:59 2 So the fact that there would be a provision particular to  
13:05:01 3 these types of individuals is not unreasonable. This is a  
13:05:04 4 special category of individuals under the protective order  
13:05:07 5 who plaintiff are seeking to show defendants' most sensitive  
13:05:11 6 information to.

13:05:13 7 So hopefully that addresses Your Honor's  
13:05:17 8 question on that point. But as we pointed out in the letter  
13:05:21 9 briefs, it's not as if plaintiffs are left without any  
13:05:25 10 ability to have individuals with trained technical  
13:05:29 11 backgrounds review defendants' source code.

13:05:34 12 Of course Google understands that it has to  
13:05:38 13 produce source code should it be ordered by the Court or  
13:05:42 14 should the situation develop such that the source code is  
13:05:46 15 responsive to defendants' requests and it's a reasonable  
13:05:48 16 request under the rules. And if so, we will understand that  
13:05:52 17 that source code can be reviewed by U.S. citizens, even by  
13:05:57 18 foreign nationals. The terms of the order that Google has  
13:06:02 19 proposed contemplates foreign nationals reviewing  
13:06:06 20 defendants' source code, but only permanent resident foreign  
13:06:10 21 nationals who are situated very differently from temporary  
13:06:13 22 foreign nationals in that they are permanent residents of  
13:06:18 23 the United States and will remain subject to the  
13:06:20 24 jurisdiction of the Court.

13:06:21 25 So there are -- it's not as if defendants or

13:06:27 1 Multifold lacks the ability to review this source code.  
13:06:29 2 They've acknowledged that there are U.S. citizens and  
13:06:33 3 permanent foreign nationals who are employed by this source  
13:06:36 4 code review company that they have hired to use, and they  
13:06:40 5 haven't provided, frankly, a satisfactory explanation as to  
13:06:45 6 whether those individuals can be used to review defendants'  
13:06:48 7 source code, should such source code be produced.

13:06:53 8                   And but regardless, I think the issue remains  
13:06:56 9 that Multifold is just not willing to be responsible for  
13:07:00 10 these protective order violations. I mean, they've  
13:07:02 11 acknowledged that these are individuals with whom they have  
13:07:04 12 no ongoing relationship, they're temporary consultants,  
13:07:08 13 they'll be unaffiliated with Multifold following the  
13:07:12 14 disclosure of source code, they're contemplated to be  
13:07:15 15 leaving the country and there's just too great of a risk  
13:07:19 16 with this case.

13:07:20 17                   And one point I think that maybe didn't come out  
13:07:23 18 in the letter briefing quite as clearly is that this case,  
13:07:27 19 Your Honor, presents somewhat of an unusual scenario. As  
13:07:32 20 Your Honor is aware, this is a large case, there are 16  
13:07:35 21 asserted patents and there was a narrowing event a couple of  
13:07:38 22 weeks ago where plaintiffs was required to reduce the number  
13:07:43 23 of asserted claims, but even following that narrowing event,  
13:07:46 24 plaintiffs have maintained that there should be 16 asserted  
13:07:47 25 patents in this case and there are still a hundred claims

13:07:51 1 that have been asserted against Google. On top of that,  
13:07:54 2 there are no claim charts attached to the complaint and the  
13:07:59 3 allegations in the complaint are extremely vague and wide  
13:08:03 4 ranging. So, for example, with respect to Google,  
13:08:09 5 practically every phone that Google has ever made or sold is  
13:08:13 6 accused in the complaint. And it's not just one aspect of  
13:08:19 7 the phones, it's their screens, it's their chips, it's their  
13:08:21 8 camera applications, it's the Youtube applications called  
13:08:25 9 out in the complaint, various other unnamed applications are  
13:08:28 10 called out in the complaint. So this is a large case with a  
13:08:31 11 great degree of uncertainty as to what code is actually  
13:08:35 12 going to be at issue in the case given where things  
13:08:38 13 currently stand.

13:08:39 14 So of course plaintiff cited the Multifold, or  
13:08:44 15 excuse me, the Geoscope case from the Eastern District of  
13:08:48 16 Virginia where there was a protective order in place along  
13:08:51 17 the lines of what plaintiffs want to use here, but that was  
13:08:54 18 a vastly different case. There are only six patents at  
13:08:57 19 issue here and not nearly the level of ambiguity as to what  
13:08:59 20 would be at issue.

13:09:00 21 So to think of this from Google's perspective,  
13:09:03 22 this is a case where there is a great deal of ambiguity as  
13:09:05 23 to which products are accused, how discovery is going to  
13:09:10 24 develop and ultimately should source code be produced, what  
13:09:14 25 source code will be at issue. So the problem here is

13:09:16 1 magnified by the scope and ambiguity of plaintiff's  
13:09:19 2 allegations in this case. So that's a concern here as well  
13:09:25 3 with respect to the temporary foreign national issue.

13:09:28 4 The other thing that I wanted to point out to  
13:09:32 5 Your Honor is Multifold's briefs cited two other cases from  
13:09:37 6 Texas, the *Uniloc* and the *WSOU* cases and argued that Google  
13:09:41 7 agreed to similar protective orders in those cases. That's  
13:09:45 8 incorrect, in fact. Those are cases where Google, in fact,  
13:09:50 9 sought a similar export control position just like it's  
13:09:55 10 seeking in this case. Given the nature of the allegations  
13:09:59 11 and given the scope of these cases and was simply that the  
13:10:03 12 Texas courts declined to implement that provision. But it's  
13:10:05 13 incorrect to say those were agreed-to provisions. They were  
13:10:06 14 not. And Google advanced export control provisions similar  
13:10:11 15 to the ones it's seeking to enter here.

13:10:15 16 And then finally, Your Honor, the plaintiffs  
13:10:19 17 cited this case, the *S.I.SV.EL v. Rhapsody* case and argues  
13:10:25 18 that it supports their position that one can't seek to  
13:10:29 19 preclude foreign nationals from viewing sensitive  
13:10:33 20 information, but that case, which is a case from this Court,  
13:10:35 21 actually supports implementing this provision here. So the  
13:10:38 22 reason that the export control provision was not adopted in  
13:10:42 23 that case is because Judge Burke found that the provision  
13:10:45 24 there, which would have barred the released source code to  
13:10:49 25 any foreign national, even if within the United States, was

13:10:53 1 too restrictive.

13:10:54 2 That's not what Google is seeking here. As I  
13:10:57 3 noted to Your Honor a few moments ago, Google acknowledges  
13:11:01 4 that U.S. citizens and permanent U.S. resident foreign  
13:11:06 5 nationals are eligible to view source code should it be  
13:11:10 6 produced in this case. So the position here is simply that  
13:11:13 7 the temporary foreign nationals present too great a risk  
13:11:17 8 given the wide ranging nature of this case.

13:11:19 9 The *Cisco* case, it had a far broader ask, which  
13:11:23 10 was to preclude foreign nationals all together, so that's a  
13:11:26 11 distinguishable case. It also acknowledges citing a case  
13:11:30 12 from Judge Stark, the *Graphics Properties v. Baseus* case,  
13:11:34 13 the uncertainty about the ability to address the harm of  
13:11:37 14 inadvertent disclosure if it occurs outside the jurisdiction  
13:11:42 15 of the United States. That's a quote from the *Cisco* case  
13:11:44 16 quoting the *Graphics Properties* case. That's exactly the  
13:11:47 17 harm that Google is concerned about here, the inability to  
13:11:52 18 address protective order violations should they occur  
13:11:55 19 outside the United States with respect to temporary foreign  
13:11:58 20 nationals.

13:11:59 21 So for all those reasons, Your Honor, Google  
13:12:02 22 would ask that the protective order attached as Exhibit A to  
13:12:07 23 its letter brief be entered. And then we noted in the brief  
13:12:11 24 that's a protective order provision that is consistent with  
13:12:14 25 the one entered by Your Honor in the *Samsung* -- in the

13:12:20 1 *Netlist/Samsung case.*

13:12:22 2 And if Your Honor decides that defendants' source code can be viewed by temporary foreign nationals, then the defendants request that the Court enter the protective order attached as Exhibit B to the letter brief, which would hold Multifold responsible for protective order violations by its retained foreign nationals.

13:12:44 8 THE COURT: All right. Thanks very much. Let's hear from the other side.

13:12:49 10 MR. DESAI: Good afternoon, Your Honor. This is 13:12:52 11 Saunak Desai on behalf of plaintiff Multifold.

13:12:54 12 Our position is that the defendants bear the 13:12:57 13 burden of showing why these restrictions are necessary both 13:13:00 14 to prevent foreign visa holders from being able to see 13:13:04 15 protected information entirely or to have this initial 13:13:09 16 liability provision, and they haven't met that burden 13:13:12 17 because the proposed restrictions are unnecessary, contrary 13:13:16 18 to the defendants' prior practice and they treat individuals 13:13:19 19 that would otherwise be authorized under the protective 13:13:23 20 order to see confidential information and have access to it 13:13:26 21 but differently based on their immigration status.

13:13:31 22 Your Honor started this with the question that I 13:13:34 23 think makes a lot of sense, which is rather than having a 13:13:39 24 categorical bar on these types of individuals from seeing 13:13:42 25 protected information, that it would make sense that there

13:13:46 1 are already agreed upon disclosure requirements. There's no  
13:13:49 2 question that anyone that would receive access to this  
13:13:51 3 information has to be identified, has to be approved by the  
13:13:54 4 producing party and if there is an issue that comes up then,  
13:14:00 5 then the parties can resolve that and seek intervention from  
13:14:04 6 the Court if necessary at a later time. There's also a  
13:14:06 7 number of other protections that are not in dispute.  
13:14:09 8 There's no question here that any protected information  
13:14:12 9 cannot leave the United States. That applies to everyone.  
13:14:15 10 No one is allowed to view the protected information outside  
13:14:18 11 the United States, with some limited exceptions to the  
13:14:23 12 extent foreign depositions are necessary. These protections  
13:14:27 13 are sufficient and they've been adopted in prior cases from  
13:14:34 14 defendant that defendants have been a part have. So we had  
13:14:37 15 pointed to *Geoscope* case where, again, involved the same  
13:14:41 16 counsel involved here. Google was involved as well, and  
13:14:45 17 there was no dispute about including the language that we  
13:14:48 18 cited there in Exhibit 3 in paragraph 14 of Multifold's  
13:14:53 19 brief where there was no issue that visa holders could see  
13:14:58 20 protected information. And in fact, that language was even  
13:15:02 21 broader. Multifold had agreed to narrow it a bit for this  
13:15:06 22 case as well at defendants' request. Now, defendants will  
13:15:09 23 now say that that case is different by making some  
13:15:15 24 allegations about the vagueness of Multifold's allegations  
13:15:18 25 here in this case and we don't agree that the allegations

13:15:22 1 are vague. But to be clear, those other Google cases that  
13:15:25 2 we cited, including *Geoscope*, those include flagship Google  
13:15:30 3 products. They related to Google location services and  
13:15:33 4 Google Maps, and the other cases in which Google's counsel  
13:15:36 5 said they didn't agree to not have the language, the *Uniloc*  
13:15:42 6 case, but they were -- but actually the Court ordered that  
13:15:45 7 protective order over their objections that did not have the  
13:15:49 8 provisions they're seeking now, those also included flagship  
13:15:52 9 Google products like Youtube and the code for underlying  
13:15:56 10 Youtube. So there's not a distinction here based on the  
13:15:59 11 technology at issue. And in all of these cases Google is  
13:16:05 12 stringently trying to protect its protected information.  
13:16:08 13 And there's no reasonable way to say that there was some  
13:16:12 14 additional protections are necessary here because of the  
13:16:15 15 number of patents or the allegations that are in the  
13:16:19 16 complaint. That's untethered from what's actually necessary  
13:16:23 17 in the protective order.

13:16:24 18 So we believe that those cases where Google had  
13:16:29 19 already agreed to this language or if they didn't agree to  
13:16:32 20 it were subject to this language without any identified  
13:16:35 21 issue are -- show that this -- that there's no real risk to  
13:16:41 22 defendants that would justify imposing the restrictions that  
13:16:44 23 they seek here.

13:16:47 24 Separately, they raised a liability issue, but  
13:16:51 25 to be clear here, they've suggested that Multifold doesn't

13:16:57 1 trust its reviewers because it doesn't believe that standing  
13:17:03 2 in for liability, being on the hook for actions of those  
13:17:05 3 reviewers shows that we don't trust them. To be clear,  
13:17:08 4 trust is a separate issue from legal liability. Multifold  
13:17:11 5 does trust its reviewers, but they are reviewers that are  
13:17:17 6 retained for a temporary purpose here in litigating this  
13:17:20 7 case, for one purpose and to have -- and the protective  
13:17:24 8 order maintains confidentiality obligations even after the  
13:17:28 9 final disposition of this case. So we don't believe that  
13:17:31 10 having this sort of ill-defined and long lasting liability  
13:17:35 11 for those actions really makes any sense. And in fact, just  
13:17:39 12 a way to try to re strict the pool of experts that Multifold  
13:17:44 13 can use.

13:17:48 14 So I'm happy to leave it there. If Your Honor  
13:17:51 15 has any further questions, happy to dress them, but I  
13:17:54 16 believe that ultimately defendants have not shown why this  
13:17:58 17 category of individuals has to be treated per se differently  
13:18:01 18 from the outset of this case.

13:18:05 19 THE COURT: All right. Thank you very much  
13:18:06 20 counsel.

13:18:07 21 So I appreciate both sides' arguments. Both  
13:18:11 22 sides' points are well taken.

13:18:13 23 I'll say at the outset, I'm not really sure that  
13:18:18 24 there's ever going to be a dispute here. So but we're here  
13:18:24 25 on the phone today, so I'll tell you what I'll tell you. I

13:18:27 1 took some notes while everyone was talking and I'll relay  
13:18:32 2 those to you now.

13:18:33 3 Google's concerns about -- and Motorola's  
13:18:37 4 concerns about the secrecy of source code are very well  
13:18:40 5 taken by the Court. I appreciate that. And I appreciate  
13:18:45 6 this type of evidence is the crown jewel of the company. I  
13:18:50 7 also appreciate defendants' concerns about their ability to  
13:18:55 8 enforce the protective order and to get redress for  
13:19:01 9 violations of the protective order challenged if there's a  
13:19:05 10 particular concern that an individual whose had access is  
13:19:09 11 not going to be in the country anymore.

13:19:11 12 I'm not particularly persuaded by plaintiff's  
13:19:16 13 argument that defendants should accept plaintiff's proposal  
13:19:22 14 because the same parties or the same counsel have agreed to  
13:19:26 15 this before. And I assume to be valid defendants' express  
13:19:30 16 concerns about the types of technology and particular  
13:19:36 17 concerns they might have about the source code that's going  
13:19:42 18 to be disclosed in this case given the type of technology,  
13:19:46 19 the number of patents asserted, the scope of the technology  
13:19:50 20 covered by the patents and the number of accused products.

13:19:53 21 So all have that said, however, I have  
13:19:55 22 discomfort about the categorization of experts proposed by  
13:20:00 23 defendants. And I do think that we can address all of these  
13:20:04 24 very valid and serious concerns that the defendants have by  
13:20:09 25 utilizing the dispute resolution procedure that's set forth

13:20:14 1 in the portion of the protective order that everyone agrees  
13:20:17 2 on, which is in Section 7.5. And maybe there won't be a  
13:20:25 3 dispute and so we'll never have to use it, so we'll just  
13:20:29 4 have to go forward and find out.

13:20:30 5 If defendants have a particular concern about an  
13:20:33 6 expert either because they're only temporary in the United  
13:20:37 7 States or there's some other concern that about this  
13:20:44 8 expert's trustworthiness or ability to abide by the  
13:20:48 9 protective order or foreign travel, the Court is certainly  
13:20:51 10 not ruling out on the phone today that the Court can tell  
13:20:58 11 plaintiff that the risk would be too great with this expert  
13:21:00 12 and they need to find another expert. But I want to do that  
13:21:04 13 with a record before me, so plaintiffs can argue that this  
13:21:07 14 particular individual's got unique expertise and abilities  
13:21:11 15 and they really need to use this individual or the defendant  
13:21:14 16 can argue there's particular risk with this individual and  
13:21:17 17 the Court can make a call. And maybe that call would be  
13:21:21 18 that this expert can't have the information at all. Or  
13:21:25 19 maybe the call would be that the expert can't have this  
13:21:27 20 information at all unless plaintiffs agree to be responsible  
13:21:31 21 for any violations. So that's something that I really want  
13:21:34 22 to do on a case-by-case basis.

13:21:37 23 So I think you all understand what the basis for  
13:21:41 24 my ruling is, but we will go with plaintiff's proposal on  
13:21:46 25 this dispute.

13:21:48 1                   While I have you all here on the phone, we  
13:21:53 2 noticed when we were preparing for today's hearing that  
13:21:57 3 there were pending motions on the docket and we got  
13:22:01 4 ourselves into a position where we could resolve those for  
13:22:05 5 you today. We could have just put a short oral order on the  
13:22:09 6 docket, but we thought as long as we have you all here we  
13:22:12 7 could put on the record in more detail the basis for our  
13:22:15 8 rulings on these pending motions.

13:22:17 9                   So the first motion I'll address is Defendant  
13:22:22 10 Google's Motion to Dismiss. That's on the docket at D.I. 12  
13:22:26 11 in case number 23-1323. That motion will be denied.

13:22:34 12                   And I'll put on the record that this is a  
13:22:37 13 partial motion to dismiss, so even if the Court fully  
13:22:41 14 granted the motion, there would still be counts moving  
13:22:44 15 forward. The complaint in the Google case has got 16 counts  
13:22:48 16 and those correspond to 16 patents being asserted by  
13:22:52 17 plaintiffs.

13:22:55 18                   And so Google hasn't challenged, for example,  
13:22:58 19 that the complaint states a claim of infringement (at least  
13:23:01 20 direct and induced infringement) for counts 1 to 3, 9, and  
13:23:05 21 13 to 16. So there's no basis to dismiss those counts in  
13:23:10 22 their entirety.

13:23:11 23                   With respect to counts 4 through 8 and 10  
13:23:14 24 through 12 (which correspond to 8 different patents) Google  
13:23:17 25 argues that the complaint fails to plausibly allege direct

13:23:22 1 infringement because it "largely parrots claim language and  
13:23:26 2 alleges the bare conclusion that Google infringes without  
13:23:30 3 providing the factual underpinning that the federal rules  
13:23:30 4 require." I disagree with that argument.

13:23:32 5 As the Federal Circuit made clear in the *Nalco*  
13:23:37 6 case, which is at 883 f.3d 1347, and again more recently in  
13:23:43 7 the *Bot M8* case, 4 f.4th 1342, plaintiff does not have to  
13:23:53 8 prove its case at the pleading stage. And there's no  
13:23:56 9 requirement that the plaintiff plead facts establishing that  
13:23:59 10 the each element of the asserted claim is met. Instead, the  
13:24:02 11 complaint must merely place the potential infringer on  
13:24:07 12 notice of what activity is being accused of infringement.

13:24:09 13 The complaint here in the Google case identifies  
13:24:12 14 the patents, the accused products, and sufficient factual  
13:24:16 15 support to put Google on notice of the activity that's being  
13:24:19 16 accused of infringement. And I'll point in particular to  
13:24:23 17 paragraphs 90, 94, 107, 116, 117, 130, 143, 154, 181, 194,  
13:24:36 18 195, 208, 221, 222, 235, 236, 262, and 275, that cite  
13:24:47 19 websites describing some of the accused products.

13:24:50 20 The complaint goes further and identifies, from  
13:24:52 21 those webpages, in other paragraphs, certain alleged aspects  
13:24:58 22 of the accused products that perform at least some of the  
13:25:01 23 requirements of a representative claim for each patent, and  
13:25:03 24 it alleges that use of the products perform all of the  
13:25:06 25 elements of the claim and says what those elements are.

13:25:09 1 Google identifies Count 4 as exemplary of what  
13:25:14 2 it says is the sufficiency of the complaint, which is the  
13:25:16 3 failure to allege facts for each element of a representative  
13:25:21 4 claim.

13:25:21 5 However, again, the Federal Circuit has said  
13:25:24 6 that there is no formal requirement that the plaintiff plead  
13:25:27 7 facts establishing that each element of an asserted claim is  
13:25:31 8 met.

13:25:31 9 Even so, having reviewed the allegations as a  
13:25:34 10 whole, I think there is enough in there to put Google on  
13:25:38 11 notice about how the limitations that Google has identified  
13:25:41 12 is problematic are alleged to be met.

13:25:45 13 For example, Google says there's not enough in  
13:25:48 14 Count 4 to plausibly allege that the accused products  
13:25:52 15 display an overlay control that can be actuated which  
13:25:56 16 results in dismissal of the full screen mode. I disagree.  
13:25:59 17 The complaint alleges in paragraph 130 that an overlay  
13:26:02 18 control can be displayed by the device by a user pressing a  
13:26:06 19 screen and when the user presses the screen, it dismisses  
13:26:09 20 the full screen media. Google may dispute that its products  
13:26:15 21 have the claimed overlay control, but there is enough in the  
13:26:18 22 complaint to understand what the accused activity is. I've  
13:26:21 23 looked at the other limitations cited by Google for the  
13:26:23 24 other challenged counts and I reach the same conclusion as  
13:26:27 25 to those. Again, Google may dispute that its products have

13:26:31 1 those elements or that the use of its products meets those  
13:26:35 2 method claim elements, but the complaint puts Google on  
13:26:38 3 notice of what activity is being accused of infringement.

13:26:41 4 Google next says that the same count 4 through 8  
13:26:44 5 and 10 through 12 fail to allege induced infringement for  
13:26:48 6 the reason that they don't adequately allege direct  
13:26:51 7 infringement; however, as I just stated, I do think they  
13:26:54 8 adequately allege direct infringement.

13:26:57 9 Google next argues that none of the counts  
13:26:59 10 adequately allege contributory infringement. But again,  
13:27:03 11 that's not a basis to dismiss any of the counts, which also  
13:27:07 12 allege direct and induced infringement, but the counts are  
13:27:11 13 moving forward. Moreover, the complaint alleges that Google  
13:27:14 14 sells components of the accused products that the complaint  
13:27:18 15 adequately alleges are directly infringed. Under these  
13:27:22 16 circumstances, that is enough. At this stage I'm not going  
13:27:25 17 to cut out the contributory infringement allegations from  
13:27:28 18 the case at this pleading stage.

13:27:30 19 And to require anything more at this stage with  
13:27:34 20 respect to the infringement allegations would require the  
13:27:36 21 equivalent of infringement contentions, which is more than  
13:27:40 22 the law demands.

13:27:41 23 And so Google's motion will be denied. I will  
13:27:44 24 note, though, that we have a scheduling order already  
13:27:50 25 entered in this case that requires plaintiff to provide its

13:27:53 1 initial infringement contentions in the form of claim charts  
13:27:55 2 less than two months from now. And as plaintiff itself  
13:27:59 3 admits, these are not complicated claims, so plaintiff  
13:28:03 4 should be able to explain what its infringement theories are  
13:28:05 5 in those claim charts. If plaintiff doesn't have a theory  
13:28:10 6 or has a frivolous theory and plaintiff is using that theory  
13:28:11 7 or no theory to try to get more discovery than it would  
13:28:15 8 otherwise be entitled to get, the Court will address that at  
13:28:18 9 the appropriate time.

13:28:19 10 Turning next to Motorola's pending motion to  
13:28:23 11 dismiss. That's at document 10 in 23-1173.

13:28:30 12 Motorola argues that "every claim on every  
13:28:33 13 infringement theory - direct, contradictory, induced, and  
13:28:36 14 willful - represent just a type of 'threadbare recitals of  
13:28:42 15 the elements of a cause of action, supported by mere  
13:28:46 16 conclusory statements' precluded by Iqbal Twonbley." I  
13:28:50 17 disagree.

13:28:51 18 Here again, plaintiffs identify its patents,  
13:28:56 19 accused products and sufficient factual support to put  
13:28:58 20 Motorola on notice of the activities being accused of  
13:29:02 21 infringement.

13:29:02 22 As in the Google complaint, plaintiff cited a  
13:29:05 23 number of webpages disclosing several limitations. I won't  
13:29:09 24 cite them all, but they include paragraphs 94 and 98, 120,  
13:29:14 25 and others.

13:29:16 1 Like the Google complaint, the Motorola  
13:29:19 2 complaint goes further and, each count when read as a whole,  
13:29:23 3 adequately identifies certain alleged features of the  
13:29:28 4 accused product that perform at least some of the  
13:29:32 5 requirements of a representative claim, and the complaint  
13:29:34 6 also alleges that use of the products perform all of the  
13:29:37 7 elements of the claim (and it sets forth what all of those  
13:29:44 8 elements are).

13:29:45 9 Requiring anything more at this stage, again,  
13:29:47 10 would be essentially requiring infringement contentions  
13:29:49 11 which aren't required at the motion to dismiss stage.

13:29:53 12 Motorola next argues that the direct  
13:29:55 13 infringement allegations based on method claims should be  
13:29:58 14 dismissed because you can only directly infringe a method  
13:30:02 15 claim by performing the method, not by selling a product  
13:30:07 16 that can perform the method.

13:30:08 17 And that's an accurate statement of the law. I  
13:30:11 18 don't think anyone disputes that, but that is not a basis to  
13:30:12 19 dismiss the count here, because, for one thing, each count  
13:30:16 20 alleges that Motorola has directly infringed by itself  
13:30:20 21 performing the claimed method and that it induces others to  
13:30:24 22 infringe. The Court is not going to parse out various  
13:30:27 23 theories at this stage under these circumstances.

13:30:30 24 Motorola argues that the Court should separately  
13:30:33 25 dismiss the allegations for contributory, induced and

13:30:36 1 willful infringement.

13:30:37 2 With respect to contributory infringement,  
13:30:39 3 Motorola makes essentially the same argument as Google, and  
13:30:43 4 I also reject that for the same reason.

13:30:46 5 With respect to induced infringement, Motorola  
13:30:51 6 says that the complaint fails to allege specific intent.  
13:30:51 7 The gist of its argument here is that there's not enough  
13:30:56 8 connecting the alleged direct infringement by the customer  
13:30:56 9 to an action taken by Motorola. I disagree under these  
13:31:01 10 circumstances.

13:31:01 11 Given the nature of the allegations, which is  
13:31:05 12 that the accused products have certain functionality that  
13:31:08 13 infringes when it's used by the customer, the complaint's  
13:31:12 14 allegation that Motorola sells the products and provides  
13:31:15 15 instructions and support on how to use them is enough.

13:31:19 16 Finally, Motorola argues that "the willful  
13:31:22 17 infringement claim should be dismissed because the complaint  
13:31:25 18 fails to allege any sufficiently egregious acts" beyond  
13:31:29 19 typical infringement.

13:31:31 20 At this stage of a patent case, and in  
13:31:34 21 particular this case with the record before the court, it  
13:31:37 22 would be inappropriate for the Court to determine whether  
13:31:39 23 this is merely a typical infringement or an egregious  
13:31:44 24 infringement. So I'm not going to dismiss any counts or  
13:31:47 25 strike any theories on that basis.

13:31:49 1 And that concludes my rules on those two pending  
13:31:52 2 motions.

13:31:53 3 I hope everyone has a great weekend. Bye bye.

13:31:58 4 (Court adjourned at 1:31 p.m.)

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10 I hereby certify the foregoing is a true and  
11 accurate transcript from my stenographic notes in the  
12 proceedings.

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14

15 /s/ Stacy M. Ingram, RPR  
16 Official Court Reporter  
17 U.S. District Court

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